

March 18, 2005

New England Gas Company

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

RE: Investigation by the Department of Telecommunications and Energy, pursuant to Executive Order 384, commencing a rulemaking pursuant to 220 C.M.R. §7.00 et seq., Residential and Commercial Energy Conservation Service Program Cost Recovery, 220 C.M.R. §11.00 et seq., Rules Governing Restructuring of the Electric Industry, 220 C.M.R. §13.00 et seq., Consumer Protection From the Unauthorized Changing of Local or Long Distance Telephone Service Providers, 220 C.M.R. §14.00 et seq., The Unbundling of Services Related to The Provision of Natural Gas, 220 C.M.R. §25.00 et seq., Billing and Termination Procedures of the Department of Telecommunications and Energy, and 220 C.M.R. §45.00 et seq., Pole Attachment, Duct, Conduit And Right-of-Way Complaint and Enforcement Procedures; DTE 04-121

Dear Secretary Cottrell:

On January 27, 2005, the Department of Telecommunications and Energy ("Department") issued an Order pursuant to Executive Order No. 384 instituting a rulemaking proceeding and promulgating proposed regulations for the purpose of amending regulations 220 C.M.R. § 7.00 et seq., § 11.00 et seq., § 13.00 et seq., § 14.00 et seq., § 25.00 et seq., and § 45.00 et seq. The Department solicited written comments on the proposed revisions, which make technical corrections, correct typographical errors and replace outdated information. Order at 1 and 2. New England Gas Company ("NEGC" or the "Company") appreciates the opportunity to comment on the Department's proposed revisions, and offers its suggestions for possible further revisions to §§ 7.00, et seq. (Proposed),¹ 14.00 et seq. (Proposed) and 25.00 et seq. (Proposed).²

¹ The Company has taken part in collaborative efforts to offer amendments and suggestions with regard to 220 C.M.R. § 7.00 et seq. (Proposed). Those comments are being offered under a separate cover by the Residential and Commercial Energy Conservation Service ("RCS") Network, an unincorporated association that periodically addresses matters relating to the RCS program. The RCS network consists of the Company, Bay State Gas Company, The Berkshire Gas Company, Cape Light Compact, KeySpan Energy Delivery – New England, Massachusetts Electric Company, Nantucket Electric Company, NSTAR Gas and Electric Company, Unitil Corporation, and Western Massachusetts Electric Company.

² The Company has attached redlined versions of 220 C.M.R. §§ 14.00, et seq. (Proposed) and 25.00, et seq. (Proposed) that reflect the Company's recommended further revisions.

220 C.M.R. § 14.00 Et Seq. (Proposed)

Under 220 C.M.R. § 14.01(2)(Proposed), the Department lists Fall River Gas Company and North Attleboro Gas Company as separate entities. However, on September 6, 2000, the Department approved the merger of Fall River Gas Company into Southern Union Company. Fall River Gas Company and Southern Union Company, D.T.E. 00-25 (2000). On that same day, the Department also approved the merger of North Attleboro Gas Company into Providence Energy Corporation and the merger of Providence Energy Corporation into Southern Union Company. North Attleboro Gas Company, Providence Energy Corporation and Southern Union Company, D.T.E. 00-26 (2000). In December 2001, the Fall River Gas Company and North Attleboro Gas Company began operating as New England Gas Company. New England Gas Company, D.T.E. 02-39, at 1, n. 1. Therefore, NEGC respectfully requests that the Department amend § 14.01(2)(Proposed) accordingly, by striking subsections (h) and (j) and replacing them with reference to New England Gas Company – Fall River Service Area and New England Gas Company – North Attleboro Service Area, respectively.

Second, in 220 C.M.R. § 14.03(8)(a)(Proposed), Disclosure of Customer Usage Information, the Department limits the historic usage information that must be provided to Suppliers and Retail Agents to the most recent 12-month period for demand and volumetric-only customers. However, 220 C.M.R. § 14.03(8)(b)(Proposed), which governs the provision of historic usage information to retail customers, does not provide for a 12-month (or other) limitation. The Company has no objection to providing its retail customers with their historic usage information upon request. However, without a reasonable limitation in place, NEGC could incur significant costs at customer expense to comply with this provision. Therefore, NEGC requests that the Department revise 220 C.M.R. § 14.03(8)(b)(Proposed) by limiting the Company's obligation to provide historic usage information to retail customers to a 12-month period. This revision establishes a reasonable time parameter for retail customers regarding the provision of historic usage data and is consistent with the provisions of 220 C.M.R. § 14.03(8)(a)(Proposed).

220 C.M.R. § 25.00 Et Seq. (Proposed)

First, the Company is required to present multiple notices for termination pursuant to 220 C.M.R. §§ 25.02(3)(b)(Proposed) and (c)(Proposed). However, the multiple noticing required for the collection or termination of outstanding accounts is significant and leads to a situation where the Company is trying to collect on one month of outstanding debt from a customer that now has as many as 95 days outstanding on their bill. By adopting the mailing date of the original bill as a start point and by eliminating the notice requirement for electric and gas companies currently required under 220 C.M.R. § 25.02(3)(b)(Proposed), electric and gas companies would thereby be able to use the 72-hour notice of intent to shutoff as their final notice to the customer. By doing so, electric and gas companies would be able to pursue unpaid accounts prior to the customer accumulating as many as 95 days of outstanding gas consumption, thereby reducing the amount of uncollectible expense borne by the paying customers in the service area.

In addition, 220 C.M.R. § 25.02(3)(Proposed) states that termination of service "may be effected between the hours of 8:00 A.M. and 4:00 P.M., Monday through Thursday, provided that such day is not a holiday" The Company, however, is available for service restoration on Saturdays, and has personnel available for restoration in the evenings. Therefore, NEGC recommends that the Department extend the termination of service timeframe by allowing for discontinuance of service from 8:00 A.M. to 5:00 P.M., Monday through Friday, provided that such day is not a holiday and so long as a gas company is available for service restoration on the following day.

In conclusion, the Company thanks the Department for the opportunity to offer these comments and proposed revisions. If you have any questions with respect to any of these comments, please feel free to contact me directly at (401) 574-2212.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kevin F. Penders", with a long horizontal flourish extending to the right.

Kevin F. Penders, Esq.
Manager, Regulatory Relations
New England Gas Company

Enclosures

cc: Elizabeth Cellucci, Hearing Officer, DTE
Joseph Rogers, Office of the Attorney General
Robert Sydney, Division of Energy Resources
Jack K. Habib, Keegan, Werlin & Pabian
Emmett E. Lyne, RichMay

220 CMR 14.00: THE UNBUNDLING OF SERVICES RELATED TO THE
PROVISION OF NATURAL GAS

Section

- 14.01: Purpose and Scope
- 14.02: General Definitions
- 14.03: Local Distribution Company Requirements
- 14.04: Supplier and Retail Agent Requirements
- 14.05: Information Disclosure Requirements
- 14.06: Complaint and Damage Claim Resolution; Penalties
- 14.07: Exceptions

14.01: Purpose and Scope

- (1) Purpose. 220 CMR 14.00 establishes the rules that will govern the natural gas industry in the Commonwealth. The purpose 220 CMR 14.00 is to provide a regulatory framework for an efficient industry structure that will minimize long-term costs to consumers while maintaining the safety and reliability of natural gas services.
- (2) Scope. 220 CMR 14.00 applies to the Local Distribution Companies, Suppliers and Retail Agents that will participate in the natural gas industry in the Commonwealth, including the following Local Distribution Companies and their successors or assigns:
 - (a) Bay State Gas Company
 - (b) The Berkshire Gas Company
 - (c) Blackstone Gas Company
 - (d) Boston Gas Company
 - (e) Colonial Gas Company
 - (f) Commonwealth Gas Company
 - (g) Essex Gas Company
 - (h) Fall River Gas Company
 - (i) Fitchburg Gas and Electric Light Company
 - (j) New England Gas Company – Fall River Service Area
 - (j) New England Gas Company – North Attleboro Service Area North Attleboro Gas Company

220 CMR 14.00 shall not apply to a Retail Customer acting as its own Supplier. Nor shall any provision of 220 CMR 14.00 be construed so as to preclude a Retail Customer from acting as its own Supplier, so long as said Retail Customer is an approved shipper on the upstream pipelines and underground storage facilities on which it will be assigned capacity, and meets all other Supplier requirements and practices set forth in the terms and conditions of the Local Distribution Company providing that Retail Customer with Distribution Service.

14.02: General Definitions

For the purposes of 220 CMR 14.00, the terms set forth below shall be defined as follows, unless the context otherwise requires.

Applicant means any entity that has filed an application for certification by the Department as a Supplier or Retail Agent as required by 220 CMR 14.00.

Bill means a written statement from a Local Distribution Company or Supplier to its Retail Customer setting forth, for the billing period identified in the Local Distribution Company's tariff:

- (a) the amount of natural gas consumed or estimated to have been consumed;
- (b) charges for Supplier and Distribution Services, as appropriate; and
- (c) any other charges.

Default Service means service other than Supplier Service that is provided to a Retail Customer in accordance with 220 CMR 14.03(4) and the provisions set forth in the Default Service tariff and terms and conditions as may be approved and on file with the Department.

Department means the Department of Telecommunications and Energy.

Distribution Customer means a recipient of Distribution Service provided by a Local Distribution Company.

Distribution Service means the delivery of natural gas to the Customer by the Local Distribution Company.

Gas Service means the provision of Distribution, Default or Supplier Services.

Local Distribution Company means a company engaged in the distribution of natural gas to Retail Customers or that owns, operates, or controls plant or equipment used for the distribution of natural gas to Retail Customers.

Retail Agent means any entity facilitating or otherwise arranging for the purchase and sale of natural gas to Retail Customers and that is certified by the Department to obtain, in accordance with 220 CMR 14.04(4)(c), the authorization from one or more Retail Customers to initiate Supplier Service provided by a Supplier.

Retail Customer means a customer located in Massachusetts that purchases natural gas for its own consumption and not for resale in whole or in part.

Non-Residential Customer means a Retail Customer who purchases and consumes gas in Massachusetts for non-household uses.

Residential Customer means a Retail Customer who purchases and consumes gas in Massachusetts for household uses.

Service Territory means the area actually served by the Local Distribution Company as defined in its Schedule of Rates.

Small Commercial and Industrial Customers are those customers whose annual load is less than or equal to 7,000 therms of gas.

Supplier means an entity certified by the Department to sell natural gas, including the sale of capacity, commodity or balancing and peaking services to a Retail Customer, with the exception of:

- (a) a Default Service provider; and
- (b) a Retail Agent.

Supplier Service means the sale of natural gas, including the sale of capacity, commodity or balancing and peaking services to a Retail Customer by a Supplier.

14.03: Local Distribution Company Requirements

(1) Purpose and Scope.

(a) Purpose. 220 CMR 14.03 establishes the rules of procedure by which Local Distribution Companies shall:

- 1. Provide Distribution Service to Distribution Customers in their Service Territories;
- 2. Unless otherwise directed by the Department, provide Default Service to Retail Customers in their Service Territories who are not receiving Supplier Service from a Supplier;
- 3. Bill Retail Customers in their Service Territories, and
- 4. Terminate Gas Service to Retail Customers for non-payment of bills.

(b) Scope. 220 CMR 14.00 applies to all Local Distribution Companies subject to the jurisdiction of the Department.

(2) Distribution Service.

- (a) Each Local Distribution Company shall have the exclusive obligation to provide Distribution Service to all Retail Customers within its Service Territory. No other entity may provide Distribution Service within such Service Territory without the written consent of the Local Distribution Company. Such consent shall be filed with the Department and the clerk of the municipality so affected.
- (b) Each Local Distribution Company shall file, for Department approval, a Distribution Service tariff for each rate class.
- (c) Each Local Distribution Company shall file, for Department approval, terms and conditions governing the manner in which Distribution Service

is provided to its Distribution Customers.

(2A) Low-Income Discount Rates.

- (a) Each Distribution Company shall have on file a low-income tariff that provides a reduction in the distribution charges to which such Customers would otherwise be subject.
- (b) Each Distribution Company shall establish eligibility criteria for its low-income rate tariff based upon verification of a Customer's receipt of any means-tested public-benefit program or verification of eligibility for the low-income home energy assistance program or its successor program, for which eligibility does not exceed 175% of the federal poverty level based on a household's gross income or other criteria approved by the Department.
- (c) Each Distribution Company shall periodically notify all Customers of the availability of and method of obtaining service on the low-income rate tariff.
- (d) Each Distribution Company shall allocate to other rate classes, as part of a general rate case, the revenue deficiency resulting from the low-income rate tariff using an allocation method approved by the Department for the Distribution Company.

(3) Farm Discount.

- (a) Each Local Distribution Company shall provide Retail Customers who meet the eligibility requirements for being engaged in the business of agriculture or farming, as defined in M.G.L. c. 128, § 1A, a 10% reduction in the rates to which such Retail Customers would otherwise be subject. Each Local Distribution Company shall allocate to other rate classes, as part of a general rate case, the revenue deficiency resulting from the farm discount using an allocation method approved by the Department for the Local Distribution Company.
- (b) Eligibility Verification. Eligibility for the farm discount shall be verified according to criteria established by the Department.

(4) Default Service.

- (a) Unless otherwise directed by the Department, each Local Distribution Company shall have the obligation to provide Default Service to Retail Customers within its Service Territory who are not receiving Supplier Service, consistent with the provisions set forth in 220 CMR 14.04.
- (b) Availability. Default Service shall be available to any Retail Customer who is not receiving Supplier Service in accordance with the Local Distribution Company's terms and conditions.
- (c) Rates. The rate(s) for Default Service provided by the Local Distribution Company shall be as established pursuant to the Local Distribution Company's Default Service and Cost of Gas Adjustment Clause tariffs on file with the Department.

- (d) Terms and Conditions. Each Local Distribution Company shall file, for Department approval, a tariff for the provision of Default Service.
 - (e) Fee. There shall be no fee for initiating or terminating Default Service when the initiation or termination is made concurrent with the Local Distribution Company's scheduled meter read, or is involuntary on the part of the Retail Customer.
- (5) Terms and Conditions for Suppliers. Each Local Distribution Company shall file, for Department approval, terms and conditions that will govern the relationship between the Local Distribution Company and Suppliers providing Supplier Service to Retail Customers in the Local Distribution Company's Service Territory.
- (6) Billing and Payment.
 - (a) Each Local Distribution Company shall bill its Residential Customers in accordance with 220 CMR 25.00.
 - (b) Each Local Distribution Company shall issue a single Bill, reflecting unbundled rates, to each Retail Customer in its Service Territory receiving Default Service.
 - (c) Each Local Distribution Company shall offer two billing options to a Retail Customer receiving Supplier Service:
 - 1. Passthrough billing, under which the Retail Customer would receive one Bill for Distribution Service, from the Local Distribution Company and a second Bill from the Supplier for Supplier Service and other services provided by the Supplier; and
 - 2. Complete billing, under which the Retail Customer would receive a single Bill from the Local Distribution Company for Distribution Service and Supplier Service provided by the Supplier.
 - (d) Each Local Distribution Company shall inform a Retail Customer when Supplier Service for the Retail Customer has been initiated by a Supplier, along with information on how the Retail Customer may file a complaint regarding an unauthorized initiation of Supplier Service. This information shall be included on the first Local Distribution Company Bill rendered to the Retail Customer after such initiation.
 - (e) Each Local Distribution Company may, as appropriate, require a security deposit from, and impose late payment charges on, Non-Residential Customers in accordance with 220 CMR 26.00.
 - (f) Each Distribution Company shall bill condominium common areas and facilities in accordance with 220 CMR 28.00.
- (7) Termination Protections.
 - (a) All Residential Customers shall be protected from termination of Gas Service pursuant to 220 CMR 25.00.
 - (b) Each Local Distribution Company shall remain responsible for

determining eligibility for termination protections pursuant to 220 CMR 25.00 and for administering such protections for Retail Customers within its Service Territory.

- (c) Each Local Distribution Company shall be prohibited from disconnecting or discontinuing Gas Service to a Retail Customer for a disputed amount if that Retail Customer has filed a complaint that is pending with the Department, in accordance with 220 CMR 25.02 and 220 CMR 14.06.

(8) Disclosure of Customer Usage Information.

- (a) Each Local Distribution Company shall be required to provide a Retail Customer's historic usage information to Suppliers and Retail Agents that have received the required Retail Customer authorization, as established in 220 CMR 14.04(4)(a). The type of usage information shall be as provided in 220 CMR 14.03(8)(a)1. and 2.
 - 1. Demand Customers. For Retail Customers that have been billed at least in part on a demand basis during the 36-month period prior to the release of information, the historic usage information shall include, for the most recent 12 months, the volumetric consumption for each month, and the billing demand level for each month. The Local Distribution Company shall indicate if any of the volumetric and demand measurements were not based on actual recorded usage, and provide a description of the method used to determine the estimated measurements.
 - 2. Volumetric-only Customers. For Retail Customers that have been billed on a volumetric-only basis during the 36-month period prior to the release of information, the historic usage information shall include the monthly volumetric consumption for the most recent 12 months. The Local Distribution Company shall indicate if any of the volumetric measurements were not based on actual recorded usage and provide a description of the method used to determine the estimated measurements.
- (b) Each Local Distribution Company shall be required to provide a Retail Customer's historic usage information to the Retail Customer for the most recent 12 months, upon the Retail Customer's request. Local Distribution Companies shall be required to exercise best efforts to furnish the data requested by the Retail Customer on a timely basis. The Local Distribution Company shall indicate if any of the usage information was not based on actual recorded usage and provide a description of the method used to determine the estimated usage.

(9) Dispute Resolution. Disputes between a Retail Customer and a Local Distribution Company shall be resolved in accordance with 220 CMR 25.00 and 220 CMR 14.06.

(10) Conducting Business with Unauthorized Entities. A Local Distribution

Company may provide services associated with the provision of Supplier Service only to entities that are certified as a Supplier by the Department pursuant to 220 CMR 14.04(2).

14.04: Supplier and Retail Agent Requirements

- (1) Purpose and Scope. The purpose of 220 CMR 14.04 is to establish the requirements applicable to all Suppliers and Retail Agents.
- (2) Certification Requirements.
 - (a) Scope. 220 CMR 14.04 governs application for initial certification and for renewal of certification.
 - (b) Information Filing Requirements. Before initiating service to Retail Customers, each Applicant shall apply for certification and shall file for review and approval with the Department's Secretary, in such form as is prescribed by the Secretary, a notarized document, signed by two officers of the Applicant, that includes the information identified in 220 CMR 14.04(2)(b), except that a Retail Agent shall not be required to provide the information described in 220 CMR 14.04(2)(b)10. and 13., and further provided that, to the extent that an Applicant is licensed by the Department pursuant to 220 CMR 11.05, such Applicant may incorporate by reference those portions of such application that do not differ from the application to be certified as a Supplier under 220 CMR 14.04:
 1. Legal name;
 2. Business address;
 3. A description of the company's form of ownership. If a corporation, association, or partnership
 - a. the name of the state where organized,
 - b. the date of organization,
 - c. a copy of the Articles of Organization or Incorporation (filed with the Secretary of State under M.G.L. c. 156B or, if incorporated in another state, by the cognizant approving authority established by law) or association, partnership agreement, or other similar document regarding legal organization,
 - d. by-laws, and
 - e. the name, address and title of each officer and director, partners, or other similar officers;
 4. A statement (with appropriate citation to corporate articles or by-laws or other operative documents) that acting as a Supplier is not an *ultra vires* purpose (beyond the scope) of the entity;
 5. A summary of any history of bankruptcy, dissolution, merger or acquisition of the entity in the two calendar years immediately preceding application;

6. Name, title, and an 800 or toll-free telephone number of customer service department or contact person available to customers;
7. Name, title, and telephone number of regulatory contact person;
8. Name and address of Resident Agent for Service of Process in Massachusetts for purposes of M.G.L. c. 223A, § 3;
9. Brief description of the nature of business being conducted, including types of customers to be served and geographic area in which services are to be provided;
10. A statement that the Applicant will comply with 220 CMR 14.05;
11. Documentation of technical ability to procure and deliver natural gas (such as previous gas resource experience in Massachusetts or as a shipper on interstate pipelines delivering to Massachusetts);
12. Documentation of financial capability (such as the level of capitalization or corporate parent backing) to provide proposed services;
13. Documentation that the Supplier is an approved shipper on the upstream pipelines and underground storage facilities used to serve Retail Customers in Massachusetts;
14. Evidence or documentation of attendance at a Supplier training session to be sponsored by the Massachusetts Local Distribution Companies, as set forth in the Gas Industry EBT Report, as amended from time to time, on file with the Department;
15. One sample Bill demonstrating the Applicant's familiarity with 220 CMR 14.04 from each Applicant that plans to bill Retail Customers in accordance with the passthrough billing option, as set forth in 220 CMR 14.03(6)(c)1.;
16. A statement whether any director, officer, or other similar official has in the five years immediately preceding application been convicted of a felony as defined by M.G.L. c. 274, § 1, or the equivalent law of any other jurisdiction, involving business fraud, or held liable for any antitrust violation pursuant to M.G.L. c. 93, c. 93A or the equivalent law of any other jurisdiction and whether the applicant business entity has itself been held liable for business fraud or antitrust violation (including the date and place of conviction or verdict, and nature of offense found); and
17. Declaration under penalties of perjury pursuant to M.G.L. c. 268, § 6, that all statements made in the application are true and complete. The declaration shall include evidence that the declarants are authorized as agents of the Applicant to apply for certification on its behalf.

Applicants are required to file an original application, with two copies and a copy on diskette. Within 30 days of any material or organic (M.G.L. c. 156B) change in the information required, the Applicant shall file updated information with the Department. The Applicant also

shall file an updated application annually. If there has been no material or organic change to the relevant information, an Applicant may submit an updated application indicating that there has been no change since the previous application. Any Applicant who knowingly submits misleading, incomplete, or inaccurate information may be penalized in accordance with statute and with the regulations promulgated by the Department.

- (c) Fees. Each Applicant shall pay an annual filing fee of \$100 to the Department.
 - (d) Department Review. The Department will review the information described 220 CMR 14.04(2)(b). The Department will inform the Applicant within 20 business days of submission of a complete application whether the certification application has been approved or rejected. Approved certification applications will be valid for one year from the date of approval.
 - (e) Information Disclosure. As a condition of maintaining or renewing a certificate, each Supplier shall comply with the requirements of 220 CMR 14.05. Failure to comply with these regulations may result in suspension, revocation, or non-renewal of the Applicant's certificate following a hearing before the Department in conformance with M.G.L. c. 30A.
- (3) Billing and Termination of Supplier Service Requirements. Each Supplier shall comply with 220 CMR 25.00, 27.00, 28.00, and 29.00 as provided in 220 CMR 14.04(3).
- (a) Each Bill for Supplier Service shall, at a minimum, separately identify
 1. Gas consumption, and indicate whether the consumption was based on actual recorded usage or estimated usage;
 2. The pricing structure by which the Retail Customer will be billed, as shown on the Retail Customer's Terms of Service, as described in 220 CMR 14.05(2); and
 3. The total charge for Supplier Service.
 - (b) A Supplier that bills a Retail Customer in accordance with the passthrough billing option described in 220 CMR 14.03(6)(c)1., may issue a Bill less frequently than the billing period defined in a Local Distribution Company's terms and conditions for Distribution Service provided that the Bill includes gas consumption information for each billing period and indicates whether the consumption for each billing period was based on actual recorded usage or estimated usage.
 - (c) A Bill for Supplier Service provided to a Residential Customer shall not be considered "due" under 220 CMR 14.00 in less than 45 days from receipt, as defined in 220 CMR 25.01. In those instances when a Supplier issues a Bill less frequently than the billing period defined in a Local Distribution Company's terms and conditions for Distribution Service, pursuant to 220 CMR 14.04(3)(b), the Bill shall not be

considered "due" in less time than has elapsed between receipt of the current Bill and receipt of the previous Bill from the Supplier. No disputed portion of the Bill shall be considered "due" if the Retail Customer has filed a complaint that is pending with the Department, in accordance with 220 CMR 25.00 and 220 CMR 14.06.

- (d) A Supplier may terminate Supplier Service to a Residential Customer during the term of service only if a Bill is not paid within 48 days from receipt, or such longer time as may be permitted by 220 CMR 14.04(3)(c). Prior to termination of Supplier Service, the Supplier shall render a second request for payment not earlier than 27 days after the rendering of the Bill (*i.e.*, the first request for payment). The second request for payment shall state the Supplier's intention to terminate Supplier Service on a date not earlier than 48 days after the Residential Customer's receipt of the Bill. The Supplier shall render a final notice of termination not earlier than 45 days after the Residential Customer's receipt of the Bill. Such notice shall be rendered at least 72 hours, but in no event more than 14 days, prior to termination of Supplier Service. The Supplier may terminate Supplier Service if the Bill remains unpaid on the indicated termination date, except that a Supplier may not terminate Supplier Service to a Residential Customer if the unpaid Bill is the subject of a dispute resolution, in accordance with 220 CMR 25.00 and 220 CMR 14.06.
- (e) A Supplier must notify a Customer of termination of Supplier Service at least ten days before termination, when such termination is due to reasons other than non-payment. Such notice must be in writing, addressed to the Retail Customer's billing address, and mailed first-class.

(4) Customer Authorization Requirements.

- (a) Release of Customer Usage Information. Each Supplier or Retail Agent must obtain verification that a Retail Customer has affirmatively chosen to allow the release of the Retail Customer's historic usage information to the Supplier or Retail Agent, in accordance with 220 CMR 14.04(4)(c).
- (b) Initiation of Service by a Supplier or Retail Agent. Each Supplier and Retail Agent must obtain verification that each Retail Customer choosing a Supplier has affirmatively chosen such entity, in accordance with 220 CMR 14.04(4)(c). No Supplier or Retail Agent may initiate Supplier Service to a Retail Customer without first obtaining said affirmative choice from the Customer.
- (c) Affirmative Choice. For the purposes of 220 CMR 14.04(4)(c), the term "affirmative choice" may be evidenced by a Letter of Authorization signed by the Retail Customer, Third-Party Verification, or the completion of a toll-free call made by the Retail Customer to an independent third party operating in a location physically separate from the telemarketing representative who has obtained the Retail Customer's

initial oral authorization to change to a new Supplier, or any other alternative means as established by the Department.

1. Letter of Authorization. For the purposes of 220 CMR 14.04(4)(c)1., the term "Letter of Authorization" means an easily separable document whose sole purpose is to authorize a Supplier to initiate Supplier Service for a Retail Customer. The Letter of Authorization must be signed and dated by the Retail Customer. The Letter of Authorization shall not be combined with inducements of any kind on the same document, except that a perforated "tear-off" section shall be construed as a separate document. At a minimum, the Letter of Authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:
 - a. The Retail Customer's billing name and address;
 - b. The decision to change to the prospective Supplier;
 - c. That the Retail Customer understands that no more than one Supplier may be designated to provide Supplier Service to a meter or group of meters at a specific location; and
 - d. If applicable, that the Retail Customer understands that any Supplier selection the Retail Customer chooses may involve a charge to the Retail Customer for changing the Retail Customer's Supplier.

The Letter of Authorization shall not suggest or require that a Retail Customer take some action in order to retain the Retail Customer's current Supplier. If any portion of the Letter of Authorization is translated into another language, then all portions of the Letter of Authorization must be translated into that language.

2. Third-Party Verification. For the purposes of 220 CMR 14.04(4)(c)2., the term "Third-Party Verification" means an appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative who has obtained the Retail Customer's oral authorization to change to a new Supplier, such authorization to include appropriate verification data, such as the Retail Customer's date of birth and social security number or other voluntarily submitted information; provided, however, any such information or data in the possession of the third party verifier or the marketing company shall not be used, in any instance, for commercial or other marketing purposes, and shall not be sold, delivered, or shared with any other party for such purposes.
- (d) Rescission Period. A Supplier may not initiate Supplier Service to a Residential Retail Customer, or to a Non-Residential Retail Customer with an annual load of less than or equal to 7,000 therms, choosing the Supplier prior to midnight on the third day following the Retail

Customer's receipt of a written confirmation of an agreement to purchase electricity natural gas and a statement entitled "Terms of Service," as described in 220 CMR 14.05(2), during which period the Retail Customer shall have the right to rescind, without charge or penalty, the affirmative choice of Supplier.

- (5) Security Deposits and Late Payment Charges. A Supplier shall be precluded from requiring security deposits or assessing late payment charges from Retail Customers except as specifically provided for in 220 CMR 26.00.

14.05: Information Disclosure Requirements

- (1) Purpose and Scope.
- (a) Purpose. The purpose of 220 CMR 14.05 is to ensure that Residential and Non-Residential Customers with an annual load of less than or equal to 7,000 therms are presented with consistent information by which to evaluate services offered by Suppliers and Local Distribution Companies.
 - (b) Scope. 220 CMR 14.05 applies to all Suppliers and to Local Distribution Companies as specified in 220 CMR 14.05.
- (2) Terms of Service Requirement. Each Supplier shall prepare a statement entitled "Terms of Service" as described in 220 CMR 14.05(2). The Terms of Service shall be distributed in accordance with 220 CMR 14.05(3), and shall conform to all applicable rules and regulations of the Attorney General (940 CMR). The Terms of Service shall present the following information:
- (a) Actual pricing structure according to which the Retail Customer will be billed, including an explanation of price variability and price level adjustments that can cause the price to vary;
 - (b) Length and kind of contract;
 - (c) Due date of Bills and consequences of late payment;
 - (d) Conditions under which a credit agency is contacted;
 - (e) Deposit requirements and interest on deposits;
 - (f) Limits on warranty and damages;
 - (g) Any and all charges, fees, and penalties;
 - (h) Information on consumer rights pertaining to third-party billing, deferred payments, and rescission of supplier switch within three days of receipt of confirmation;
 - (i) A toll-free number for customer service and complaints;
 - (j) Low-income rate eligibility;
 - (k) Statement that customers should contact their local distribution company for details on the availability and terms of default service; and
 - (l) Method whereby the Retail Customer will be notified of changes to items in the Terms of Service.

- (3) Distribution of Terms of Service. The Terms of Service shall be distributed as follows:
- (a) At the same time or immediately subsequent to a Retail Customer's affirmative choice of a Supplier, the Supplier shall provide the Retail Customer with the Terms of Service prepared pursuant to 220 CMR 14.05(2). Said document shall accompany written confirmation by the Supplier of the Retail Customer's agreement to take Supplier Service; and the Retail Customer's receipt of said document shall trigger the three-day rescission period required in 220 CMR 14.04(4)(d).
 - (b) Default Service. With the first bill rendered to a Retail Customer following the initiation of Default Service, the Local Distribution Company shall notify the Retail Customer that the tariff for such service and the Local Distribution Company's terms and conditions for Distribution Service are on file with the Department and are available upon request.
 - (c) Upon request. The Terms of Service, or terms and conditions, for any available supply offerings shall be available to any person upon request.
- (4) Information Disclosure in Advertising.
- (a) All advertisements shall comply with state and federal regulations governing advertising, including the Attorney General's regulations (940 CMR). The Department does not represent that materials prepared pursuant to 940 CMR constitute compliance with state and federal regulations governing advertising.
 - (b) Any advertising or marketing of natural gas rates shall indicate the rate to be charged in bold print, in the case of printed and Internet materials, or through clear and distinct speech in the case of television or radio advertisements.
 - (c) A Supplier shall print in a prominent position in a written marketing materials describing Supplier Service, including newspaper, magazine, and other written advertisements; direct mail materials; and electronically-published advertising including Internet materials, that a Retail Customer may obtain the Terms of Service upon request. Where Supplier Service is marketed in non-print media, the marketing materials shall indicate that the Retail Customer may obtain the Terms of Service upon request.
- (5) Enforcement. Dissemination of inaccurate information, or failure to comply with the Department's regulations on information disclosure, may result in suspension, revocation, or non-renewal of a Supplier's or Retail Agent's certificate pursuant to 220 CMR 14.04(2)(e).

14.06: Complaint and Damage Claim Resolution - Penalties

- (1) Purpose and Scope.
 - (a) Purpose. The purpose of 220 CMR 14.06 is to establish the complaint and dispute resolution procedures and associated penalties applicable to Customer complaints or damage claims between Retail Customers and Local Distribution Companies, Suppliers or Retail Agents.
 - (b) Scope. 220 CMR 14.06 applies to all Local Distribution Companies, Suppliers and Retail Agents doing business in the Commonwealth.
- (2) Liability Claims. A Retail Customer may file a complaint with the Department alleging property damage under \$100.00. The Department will refer any such complaints for mediation and/or arbitration. Any claims for damages will be resolved within 60 days from the date the claim was filed with the Department.
- (3) Unauthorized Initiation of Supplier Service Complaints.
 - (a) Complaint Procedure.
 1. A Retail Customer may file a complaint with the Department stating that a Supplier or Retail Agent has initiated Supplier Service to the Retail Customer without first obtaining evidence of the Retail Customer's affirmative choice as defined in 220 CMR 14.04(4)(c). The complaint must be filed within 30 days after the statement date of a Bill or notice from the Local Distribution Company indicating that Supplier-Service has been initiated by the Supplier or Retail Agent.
 2. Within ten business days of filing the complaint, the Retail Customer will receive from the Department a request asking for the following: a copy of the Retail Customer's Bill or notice that included the information regarding the initiation of Supplier Service; the name of the original Supplier or Retail Agent, if applicable; and any other information the Department deems relevant.
 3. The Retail Customer shall, within 15 business days of the Department's notifying the Retail Customer, respond to the Department's request for information.
 4. Within 15 business days of receiving the requested information from the Retail Customer, the Department will send the following:
 - a. A letter to the Retail Customer acknowledging receipt of the information;
 - b. A letter to the Local Distribution Company, original Supplier or Retail Agent informing it of the pending complaint and requesting that information relevant to the initiation of Supplier Service be furnished; and
 - c. A letter informing the new Supplier or Retail Agent of the

pending complaint, requesting evidence of the Retail Customer's affirmative choice as defined in 220 CMR 14.04(4)(c) to initiate Supplier Service, and requesting any additional information the Department deems relevant.

5. The Distribution Company, original Supplier or Retail Agent and the new Supplier or Retail Agent shall respond to the Department's request within five business days from the issuance of said requests.
 6. Within 25 business days after receiving evidence of the Retail Customer's affirmative choice and all relevant information as required herein, the Department will determine if the Retail Customer authorized the new Supplier or Retail Agent to initiate Supplier Service.
- (b) Refunds. If the Department determines that the new Supplier or Retail Agent does not possess the required evidence of the Customer's affirmative choice as defined in 220 CMR 14.04(4)(c), and the new Supplier charged more than the original Supplier, the Department will require the new Supplier to refund the following:
1. To the Customer, the difference between what the Customer would have paid to the Local Distribution Company or previous Supplier and actual charges paid to the new Supplier;
 2. To the Customer, any reasonable expense the Customer incurred in switching back to the Local Distribution Company or original Supplier; and
 3. To the Local Distribution Company or original Supplier, the gross revenue the Local Distribution Company or original Supplier would have received from the Customer during the time the Customer received Supplier Service from the new Supplier.

(4) Other Customer Complaints.

- (a) All other complaints brought by a Customer against a Local Distribution Company, Supplier or Retail Agent shall follow the procedures set forth in 220 CMR 25.02(4), except as provided in 220 CMR 124.06 (4)(b).

(b) Alternative Dispute Resolution.

1. Each Local Distribution Company, Supplier or Retail Agent shall make available to Customers alternative dispute resolution procedures, including mediation, arbitration, facilitation or other dispute resolution procedures.
2. Allegation of Unfair or Deceptive Trade Practice. Each Local Distribution Company, Supplier and Retail Agent shall submit to arbitration upon the request of a Customer alleging that an unfair or deceptive trade practice has occurred. The Department also will make a voluntary mediation process available to consenting parties.
3. Alternative dispute resolution pursuant to 220 CMR

14.06(4)(b)(1) and (2) may only be requested after the Customer and Local Distribution Company, Supplier or Retail Agent have attempted to resolve the dispute pursuant to 220 CMR 25.02(4)(a).

- (5) Penalties. Each Local Distribution Company, Supplier or Retail Agent doing business in Massachusetts shall be subject to a range of sanctions for violations of the Department's regulations. Such sanctions may be imposed only following a hearing before the Department in conformance with M.G.L. c. 30A and 220 CMR 25.00. In the case of egregious misconduct or a pattern of misconduct, the Department may take decertification action against a Supplier or Retail Agent. Such action may result in the Supplier or Retail Agent being:
- (a) Required to notify existing and prospective Customers of probationary status;
 - (b) Prohibited from signing up new Customers for a specified period of time; and/or
 - (c) Subject to suspension, revocation or non-renewal of its license.

14.07: Exceptions

The Department on its own motion or for good cause shown by a petitioner may grant an exception to any provision of 220 CMR 14.00.

REGULATORY AUTHORITY

220 CMR 14.00: M.G.L. c. 164; c. 25.

220 CMR 25.00: BILLING AND TERMINATION PROCEDURES OF THE
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Section

- 25.01: Applicability and Definitions
- 25.02: Billing and Termination Procedures for Residential Customers
- 25.03: Termination of Service to Customers During Serious Illness
- 25.04: Termination of Service to Accounts Affecting Tenants
- 25.05: Termination of Service to Elderly Persons
- 25.06: Construction

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within 20 days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the 20 days after the date of service of said decision, order or ruling. (M.G.L. c. 25, § 5 as most recently amended by St. 1971, c. 485.)

25.01: Applicability and Definitions

(1) Application. 220 CMR 25.00 shall apply to all gas, electric and water utility companies subject to the jurisdiction of the Department of Telecommunications and Energy and all municipal gas and electric departments, corporations and plants. Excluded from the application of 220 CMR 25.00 are the following: industrial accounts, commercial accounts not affecting tenants, and accounts affecting nursing homes, hotels, and motels.

220 CMR 25.00 supersedes all prior regulations of the Department of Telecommunications and Energy governing billing and termination procedures for gas, electric and water utilities.

If any part of the terms and conditions of any company are in conflict with 220 CMR 25.00, 220 CMR 25.00 shall be controlling.

(2) Definitions. The following terms, as used in 220 CMR 25.00 shall have the following meanings:

Bill, a written statement from a company to a customer setting forth the amount of gas, electricity or water consumed or estimated to have been consumed for the billing period set forth in the company's tariff and the charges therefor.

Budget Plan, an equalized payment arrangement whereby the customer's gas or electric usage is projected for a period, equal monthly charges are calculated and billed for said period, and said charges are reconciled with actual usage in the final billing for said period.

Company, a gas or electric company as defined in M.G.L. c. 164, a water company as defined in M.G.L. c. 165, or a municipal gas or electric department, corporation or plant established pursuant to any general or special law.

Customer, any user of gas, electricity or water billed on a residential rate as filed with the Department.

Department, the Department of Telecommunications and Energy, Commonwealth of Massachusetts.

Financial Hardship, shall exist when a customer is unable to pay an overdue bill and such customer meets income eligibility requirements for the Low-Income Home Energy Assistance program administered by the Massachusetts Department of Housing and Community Development, or its successor, or when the Director of the Department's Consumer Division, or his designee, determines that such a finding is warranted.

Heat Related Account, an account for gas or electric service which service supplies fuel or energy, as the case may be, to a space heating system or is used to activate the space heating system, of a customer or landlord customer.

Landlord Customer, one or more individuals or an organization listed on a gas, electric or water company's records as the party responsible for payment of the gas, electric or water service provided to one or more residential units of a building, of which building such party is not the sole occupant.

Payment Plan, a deferred payment arrangement applied to an amount of past due charges. Said arrangement shall extend over a minimum of four months, or such other period approved by the Department's Consumer Division, whereby equal payments of said past due charges in addition to currently due charges are billed to the customer.

Projected Bill, a written statement of the amount which would be owed if the same quantity of gas, electricity or water were supplied at current rates as was supplied for the same billing period during the previous year; but, if no service was rendered to the account during the same billing period for the previous year or if the demand for such service is significantly different from that of the previous year, such written statement shall be based upon a reasonable method of estimating charges for usage approved by the Department.

Receipt, in the case of a bill or notice required by 220 CMR 25.00, shall be presumed to be three days after the date of mailing, or if a bill or notice is delivered rather than mailed, on the date of delivery.

Residential Building, a building containing one or more dwelling units occupied by one or more tenants, but excluding nursing homes, hotels and motels.

Service, gas, electric or water service.

Tenant, any person or group of persons whose dwelling unit in a residential building is provided gas, electricity, or water, pursuant to a rental arrangement, but who is not the customer of the company which supplies such gas, electricity or water.

25.02: Billing and Termination Procedure for Residential Customers

(1) Billing and Payment. All bills shall be payable upon receipt. However, no bill shall be considered "due" under applicable law or 220 CMR 25.00 in less than 45 days from receipt or in the case of gas and electric companies in less time than has elapsed between receipt of such bill and receipt of the most recent previous bill for the company's services, whichever period is greater.

The initial bill after commencement of service shall not be "due" in less than 45 days from receipt, or in less time than has elapsed between receipt of such bill and the day upon which service was initially extended, whichever is greater.

No disputed portion of a bill which relates to the proper application of approved rates and charges, or the company's compliance with 220 CMR 25.00, shall be considered "due" during the pendency of any complaint, investigation, hearing or appeal under 220 CMR 25.00.

(2) Actual Meter Reading and Estimated Bills

(a) A company shall make an actual meter reading at least every other billing period. A company may estimate a customer's consumption of gas, electricity or water only if:

1. The procedure used by the company for calculating estimated bills has been previously approved by the Department;
2. The company clearly indicates that the bill is an estimate by use of the word "ESTIMATE" on the face of the bill, in close proximity to the amount thereof, and in a manner previously approved by the Department; and
3. The company has either scheduled readings for times other than normal business hours, or attempted by mail or by telephone to make an appointment with the customer, and provided cards on which the customer may record the reading; and

4. The company has not rendered an estimated bill to the customer for the billing period immediately preceding that for which the estimate is made.

(b) Notwithstanding the provisions of the 220 CMR 25.02(2)(a) the company may render an estimated bill for any billing period in which:

1. The customer has knowingly or willfully denied reasonable access to the company's representatives for the purpose of taking an actual reading of the meter; or
2. The customer has otherwise made an actual reading of the meter unnecessarily difficult; or
3. Circumstances beyond the control of the company make an actual reading of the meter extremely difficult.

(3) Termination of Service. Except as elsewhere provided herein, service may be terminated only if:

(a) ~~With respect to water companies only, A~~ bill is not paid within 45 days from receipt, or such longer periods as may be permitted by 220 CMR 25.02(1); and

(ib) ~~t~~The company, not earlier than 27 days after the rendering of the bill (*i.e.* first request for payment), renders a second request for payment, stating its intention to terminate on a date not earlier than 48 days after the receipt of the bill in the case of gas and electric companies; and 46½ days after receipt of the bill in the case of water companies; and

(iie) ~~t~~The company renders a final notice of termination not earlier than 45 days after receipt of the bill. Such notice must be rendered at least 3672 hours, but in no event more than 14 days, prior to termination; and in the case of gas and electric companies; and at least 36 hours prior to termination in the case of water companies; and

(iiid) ~~t~~The bill remains unpaid on the termination date indicated on the notice.

(b) ~~with respect to~~In the case of gas and electric companies, a bill is not paid within 45 days after the date the bill is mailed to the customer, or such longer periods as may be permitted pursuant to 220 C.M.R. 25.02(1); and

~~the company renders a final notice of termination not earlier than 27 days after the rendering of the bill (*i.e.* first request for payment); renders a second request for payment, stating its intention to terminate on a date not earlier than~~

(i) ~~the company, not earlier than 45 days after the mailing of the original bill (*i.e.*, the first request for payment), mails~~renders a second and final request for payment, stating its intention to terminate within 72 hours after receipt of such second and final notice; and

- (ii) the bill remains unpaid on the termination date indicated on the second and final notice. on a date not earlier than 72 hours after receipt of such second and final notice.

In no event shall service to a customer be terminated for failure to pay a portion of any bill which is the subject of a dispute pursuant to 220 CMR 25.02(4). However, a customer shall be responsible for and accordingly shall be subject to termination for non-payment of any portion of any bill which is not the subject of a dispute pursuant to 220 CMR 25.02(4).

Service shall not be terminated for any reason other than failure to pay a bill, unless the Department certifies its approval after giving both parties an opportunity to be heard. Such a hearing shall not be construed to be an "adjudicatory proceeding" as defined by M.G.L. c. 30A.

Nothing in 220 CMR 25.00 shall be construed to prevent termination for reasons of safety, health, cooperation with civil authorities or any other reason for which termination power is specifically granted in the Massachusetts General Laws.

When service to a customer has been terminated, the Director of the Department's Consumer Division or the Director's designee, may order resumption of service pending an investigation pursuant to 220 CMR 25.02(4).

Termination of service under 220 CMR 25.02 may be effected between the hours of 8:00 A.M. and 45:00 P.M., Monday through ~~Thursday~~Friday, provided that such day is not a holiday as defined ~~in~~undefined in M.G.L. c. 4, § 7, cl. (18) or the day before such a holiday; and the company is available for service restoration on the following day (regular business day).

All bills shall contain, or be accompanied by, a brief explanation of the customer's rights pursuant to 220 CMR 25.02(4). All second requests for payment referred to in 220 CMR 25.02(3)(b) and all termination notices referred to in 220 CMR 25.00 shall be accompanied by a brief explanation of the customer's rights pursuant to 220 CMR 25.00.

(4) Investigation and Appeal. If any matter relating to the proper application of approved rates and charges, or the company's compliance with 220 CMR 25.00, is subject of a complaint by the customer, the following procedure shall apply:

(a) The customer shall notify the company of the dispute by telephone, mail or in person. The company shall refer this matter to an employee assigned to investigate billing complaints. Such employee shall investigate and make a substantial effort to resolve the customer's complaint.

The customer shall be notified in writing as to the resolution of the complaint and the company shall keep a record of said correspondence for three years. Such notice shall also include the following statement: "If you still consider your bill to be inaccurate or if you continue to dispute the time over which your arrearage is to be paid, you have a right to appeal to the Department of Telecommunications and Energy."

Write: Consumer Division
Massachusetts Department of Telecommunications and Energy

One South Station
Boston, MA 02110
or Call: (617) 305-3630 ~~727-3531~~ or Toll-Free 1-800-392-6066
TTY (for the hearing impaired only): 1-800-323-3298

(b) If the customer disputes the company's written notice of decision, the customer shall notify the Department of Telecommunications and Energy Consumer Division that he wishes to appeal. A representative of the Department shall notify the company and thereafter shall conduct an investigation. Such investigation shall include an opportunity for each side in the dispute to be heard and may include a pre-hearing conference. Such hearing shall not be construed to be an "adjudicatory proceeding" as defined by M.G.L. c. 30A.

The Department representative shall rule promptly upon the appeal and notify the customer and company of his decision and of the right to appeal the decision to the Department for an adjudicatory proceeding as defined by M.G.L. c. 30A.

(c) Within seven days of being notified of the decision of the Department's representative the customer and/or the company may request a hearing under M.G.L. c. 30A.

(5) Orders. Pending final determination of a dispute, the Director of the Department's Consumer Division or his designee may enter any temporary orders which he deems just and equitable including but not limited to restoration of service and payment plan arrangements.

Upon final determination of the dispute by the Department, the Department shall order service to be continued, restored, or terminated upon such terms and conditions as it deems equitable to both the customer and the company.

(6) Payment and Budget Plans. Each company shall make available payment plans and budget plans as an option to all customers for payment of accumulated arrearages and/or prospective billings, as the case may be.

All bills and notices specified by the Department shall contain language, approved by the Department, advising customers of the availability of the aforementioned plans.

(7) Violation, Complaint. Any customer or company aggrieved by any action in violation of 220 CMR 25.00 may at any time request a hearing before the Department by making a complaint in writing to the Department, provided that such matter has not been previously investigated by the Department.

(8) Multiple Meters. No company may bill any residential unit in a multiple residence on the basis of an estimated allocation of charges made from a reading from a single meter in such multiple residence.

(9) Rate Classification. Each customer shall receive, either through the mail or by hand delivery, no later than the initial billing on his or her account, a notice describing the rate on which he or she is charged. This notice shall include:

- (a) A statement that specific rates are available for particular uses, *e.g.*, residential, heating, all-electric, commercial, time-of-use;
- (b) A statement that the customer should notify the company immediately if he or she is not charged at the most advantageous rate; and
- (c) A telephone number at the company which the customer may use to obtain additional information about available rates.

(10) Customer of Record. Whenever a new account is created for any service address, the company shall, at the time of the initial billing on this account, send separately to each listed customer of record a notice that such person is a customer of record. The notice shall include:

- (a) A listing as the customer appears on company records;
- (b) A statement that a customer of record is liable for all bills rendered on said account; and
- (c) A telephone number at the company which the customer may call to change his or her status with relation to this account, or to make corrections in the company's listing of name and address.

(11) Form of Notices. All written notices required by 220 CMR 25.00 shall contain such language and be in such form as shall be approved by the Department subsequent to the adoption of 220 CMR 25.00. The Department may require that such notices be written in languages other than English.

(12) General Applicability. The foregoing provisions of 220 CMR 25.02 shall apply to all billing and termination matters under 220 CMR 25.00 unless otherwise indicated.

25.03: Termination of Service to Customers During Serious Illness, Infant, and Winter Protection

(1) Statement of Protection from Shut-off due to Financial Hardship.

No company may shut off or refuse to restore utility service to the home of any customer if:

- (a) It is certified to the company:
 - 1. That the customer or someone living in the customer's home is seriously ill; or
 - 2. That there is domiciled in the home of the customer a child under the age of 12 months and the customer's service has not been shut off for nonpayment before the birth of the child; or
 - 3. Between November 15 and March 15, that the customer's service provides heat or operates the heating system and that the service has not been shut off for nonpayment before November 15; and

(b) The customer is unable to pay any overdue bill, or any portion thereof, because of financial hardship, as defined in 220 CMR 25.01(2)(f).

(2) Procedure for Certifying Protections. A claim of protection under 220 CMR 25.03(1) may initially be made by telephone. The telephone certification shall remain valid until the filing time periods specified hereunder have expired. In the case of serious illness, the telephone call must be made by a registered physician or local board of health official. In response to a claim of protection, the company shall forward to the customer a financial hardship form in such a form as shall be approved by the Department and shall instruct the customer or party acting on behalf of the customer that the financial hardship form forwarded to the customer must be filled out and returned to the company within seven days from the date of receipt. The company shall also, where applicable to the particular claim:

- (a) Inform the customer or party acting on behalf of the customer that a registered physician or local board of health must forward to the company a certificate of serious illness within seven days from the date of notice. Said certificate shall state the name and address of the seriously ill person, the nature of the illness and the business address and telephone number of the certifying physician or local board of health; or
- (b) Inform the customer or party acting on behalf of the customer that written certification must be forwarded to the company within seven days from the date of notice stating the name, birthdate and domicile of the child claimed to be under the age of 12 months. Certification may be in the form of a birth certificate, or a letter or official documents issued by a registered physician, local board of health, hospital or government official, Department of Transitional Assistance, clergyman, or religious institution. The company, in turn, shall determine within seven days from the date all certifications were due back whether all claims have been appropriately certified. If the company determines that any claim has not been certified, the company shall so notify the customer in accordance with the provisions of 220 CMR 25.03(8)(c). Notice to the customer shall include a statement of the customer's right to dispute the company's determination by contacting the Department within seven days from the date of receipt of such notice.

(3) Conclusive Effect of Certificates. Certification of serious illness and infancy shall be conclusive evidence of the existence of the condition claimed unless otherwise determined by the Department after investigation.

A company which received fuel assistance payments in the prior winter season on behalf of a customer shall presume that customer meets the financial hardship guidelines set out in 220 CMR 25.01(2)(f) and shall protect the account from November 15 through January 1, in order to give the customer sufficient time to apply for fuel assistance for the current winter season. If application for fuel assistance or other certification of financial hardship is not made by January 1 the company may pursue normal collection activity consistent with 220 CMR 25.00. For all customers, the

company must provide financial hardship forms and appropriate instructions for completion on or before November 15.

A signed statement by the customer showing that his/her income falls within the financial hardship guidelines as set out in 220 CMR 25.01(2) shall be considered presumptive evidence of financial hardship unless otherwise determined by the Department.

(4) Renewal of Certification. In all cases where service is continued or restored pursuant to a claim under 220 CMR 25.03(1), the customer shall renew the financial hardship form quarterly. If the financial hardship is shown to be ongoing for the period November 15 to March 15, renewal shall be waived for that period. However, the provisions of 220 CMR 25.03(3) shall govern where certification of financial hardship occurs due to participation in a fuel assistance program the prior winter.

Certifications of serious illness shall be renewed monthly, except that where illness is certified as chronic, the serious illness certificate shall be renewed quarterly.

Certification of infancy shall remain in effect without renewal until the child reaches the age of 12 months.

(5) Notices. Collection notices shall be in such form as approved by the Department.

All arrearage notices shall be accompanied by a prominent written notice of the protections afforded by 220 CMR 25.03(1). No notice threatening termination of service shall be issued between November 15 and March 15 to any customer who has provided the company with a notice of financial hardship in accordance with 220 CMR 25.00, unless otherwise authorized by the Department.

(6) Appeal, Investigation and/or Hearing. If a company determines that a customer is not entitled to protection under 220 CMR 25.03(1) and the customer disputes this determination as provided in 220 CMR 25.03(2), the Company shall not terminate service pending resolution of the dispute. The Department shall investigate and may order service to be continued, restored or shut off upon such terms or conditions as are just and equitable and consistent with 220 CMR 25.00.

Upon a finding by the Consumer Division of the Department that any company has failed to adhere to any of the provisions of 220 CMR 25.00 or to appropriately screen the accounts it pursues for termination between November 15 and March 15, it may require said company to obtain individual written permission from the Department, under terms the Department shall set, for each account or type of account that it desires to shut off.

(7) Procedure for Terminating Service. Upon entering any premises to shut off service to any customer therein pursuant to the provisions of 220 CMR 25.00, the company representative must, before shut-off, state to an occupant that service is to be shut off. He shall also present such occupant with a notice of the protections afforded customers under 220 CMR 25.03(1) and a financial hardship form. If the occupant claims protection, shut-off shall be postponed for 72 hours in order to allow the customer time to submit documentation supporting his/her claim or to obtain telephone certification

from a physician, governmental agency, or religious institution as provided generally in 220 CMR 25.03(2). In the case of telephone certification, the company shall inform the calling party of the seven day deadline for submission of appropriate documentation as provided in 220 CMR 25.03(2).

If service is terminated to a home when none of its occupants is present, or when entry is not allowed by the occupant, the company shall leave a notice describing serious illness, infant and winter protections and a financial hardship notice at or under the occupant's door.

If, after having postponed termination due to an oral assertion of protection under 220 CMR 25.00, the company determines pursuant to 220 CMR 25.03(2) that a customer has not appropriately certified his or her claim for protection under 220 CMR 25.03(1) and the determination has not been appealed within seven days as set out in 220 CMR 25.03(8), the company may terminate service in accordance with 220 CMR 25.03(8).

During the period November 15 to March 15, in addition to the requirements set out above, the company shall give heating account customers telephone or personal notice of the impending shut-off no earlier than three days before the shut-off.

(8) Procedure for Terminating Service after Postponement. Notwithstanding the provisions of 220 CMR 25.03(1) and 25.03(7), shut-off need not be postponed where a customer has not appropriately certified his or her claim for protection, and the company's determination that the customer does not qualify for protection has not been appealed within seven days as set out in 220 CMR 25.03(2). However, the right to shut off service shall arise only after the company has given the customer written notice of:

- (a) The proposed termination date and the reason therefor;
- (b) The protections afforded by 220 CMR 25.03(1); and
- (c) The right to dispute any company decision adverse to the customer's claim for protection under 220 CMR 25.03(1) by writing or calling the Department within seven days of receipt of notice and the customer has failed to contact the Department within the allotted time. The Department's address and telephone numbers shall be provided in all notices as approved by the Department.

(9) Violation of Regulations. Willful violation of 220 CMR 25.03(1) through (8), as determined after hearing as provided in 220 CMR 25.02(4), by any gas, electric or water utility company subject to the Department's jurisdiction, or any municipal gas or electric corporation, shall result in the imposition of a penalty of \$100 for each violation.

25.04: Termination of Service to Accounts Affecting Tenants

(1) Identifying Customers. Each company shall devise procedures reasonably designed to identify, before termination of service for non-payment, landlord customers paying for service to a residential building. Such procedures shall be submitted by each company in writing to the Department. The Department may require, by a written notification, such modifications of a company's procedures as it considers reasonably

necessary to carry out the purposes of M.G.L. c. 164, § 124D and M.G.L. c. 165, § 11E and 220 CMR 25.05.

(2) Identifying Affected Tenants. Each company shall devise procedures reasonably designed to identify the number and addresses, including apartment numbers, of tenants who may be affected by a planned termination of service to an account of a customer who has been determined, pursuant to procedures adopted under 220 CMR 25.04(1) to be a landlord customer. Such procedures shall be submitted by each company in writing to the Department. The Department may require, by a written notification, such modifications of a company's procedures as it considers reasonably necessary to carry out the purposes of M.G.L. c. 164, § 124D and M.G.L. c. 165, § 11E.

(3) Termination of Service. No company shall terminate service to any landlord customer for non-payment except in accordance with 220 CMR 25.03(1) and 220 CMR 25.04.

(4) Pre-termination Notice to Landlord Customers. Prior to the termination of service to any landlord customer for non-payment, the company shall give the landlord customer prior written notice of termination as required by M.G.L. c. 164, § 124D and M.G.L. c. 165, § 11E. Such notice shall contain the following information:

- (a) The amount owed the company by the landlord customer for each affected account;
- (b) The date on or after which service will be terminated, such date to be not less than 37 days after the date on which notice is first given to the landlord customer;
- (c) The date on or after which the company will notify the tenants of the proposed termination of their rights under 220 CMR 25.00, including their rights to withhold rent;
- (d) The right of the landlord customer to avoid a termination of service by paying the company the full amount due for the accounts in question prior to the intended date of termination or by paying a portion of the amount due and making an equitable arrangement with the company to pay the balance; and
- (e) The right of the landlord customer to invoke the procedures set forth in 220 CMR 25.02(4) and 220 CMR 25.03(1).

(5) Investigation and Appeal for Landlord Customers. The provisions of 220 CMR 25.02(4) shall be applicable to all disputes involving landlord customers.

In any proceeding pursuant to 220 CMR 25.02(4) the Department may require, among other things, that the landlord customer provide the names, addresses, and apartment numbers of each of the tenants who may be affected by a termination of service.

(6) Notice to Tenants. The company shall give a written notice, or notice in such form as is approved by the Department, of the proposed termination for non-payment to each residential unit reasonably likely to be occupied by an affected tenant. Such notice shall

not be rendered earlier than seven days following notification to the landlord customer pursuant to 220 CMR 25.04(4). However, if the landlord customer commences a proceeding pursuant to 220 CMR 25.04(5), such notice shall not be rendered until such proceeding has been concluded. In no event shall such notice be served upon the tenants less than 30 days prior to the termination of service to the landlord customer on account of non-payment. Upon affidavit, the Department may, for good cause shown by the company, reduce the minimum time between notification of the landlord customer and notification of the tenants.

The notice may be mailed or otherwise delivered to the address of each affected tenant, and shall contain the following information:

- (a) The date on which the notice is rendered;
- (b) The date on or after which service will be terminated;
- (c) The circumstances under which service to the affected tenant may be continued, specifically referring to the conditions set out in 220 CMR 25.04(7);
- (d) The projected bill as described in 220 CMR 25.04(7);
- (e) The statutory rights of a tenant:
 - 1. To deduct the amount of any direct payment to the company from any rent payments then or thereafter due;
 - 2. To be protected against any retaliation by the landlord for exercising such statutory right; and
 - 3. To recover money damages from the landlord for any such retaliation.
- (f) A telephone number at the company and at the Department which a tenant may call for an explanation of his rights.

The information in 220 CMR 25.04(6)(a) through 25.04(6)(f) shall be posted not less than 30 days prior to termination of service to the landlord by the company in those common areas of the building where it is reasonably likely to be seen by the affected tenants.

(7) Rights of Tenants to Continued Service

- (a) At any time before or after service is terminated on account of non-payment by the landlord customer, tenants may apply to the company to have service continued or resumed. The company shall not terminate service or shall resume service previously terminated if it receives from the tenants an amount equal to a projected bill for the 30 day period commencing on the later of the date of the planned termination or the date service is resumed, whichever is later.
- (b) Thereafter, the company shall notify each tenant of the total amount of the projected bill for the second and each succeeding period of 30 days or less. If the tenants fail to make payment of any projected bill before the start of the period for which the bill is projected, the company may commence termination procedures; provided that no such termination may occur until 30 days after each tenant has received written notice of the proposed termination. Such notice shall contain:
 - 1. The date on or after which service will be terminated;

2. The amount due, which shall include the arrearage on any earlier projected bill due from tenants;
 3. A telephone number at the company and at the Department which a tenant may call for an explanation of his rights; and
 4. The right of a tenant, within seven days of the notice, to invoke the procedure for investigation and hearing set forth in 220 CMR 25.02(4).
- (c) Tenants shall be considered customers for purposes of 220 CMR 25.02(4) and 25.02(5) and shall be entitled to dispute any matter relating to a projected bill in accordance with the provisions of 220 CMR 25.02(4).
- (d) Notwithstanding anything contained elsewhere in 220 CMR 25.00, prior to any termination for non-payment which would affect tenants, the company shall notify the Department's Consumer Division by telephone of the proposed termination. Upon notice of such proposed termination, or during any hearing pursuant to 220 CMR 25.02(4), the Department may make inquiry of the parties as to the following matters, among others:
1. The amount the tenants have paid to the company in relation to the amount equal to one month's projected bill;
 2. The number of vacant units in the building;
 3. The extent to which the tenants have control over their source of money for rent payments, including such matters as the lateness of Public Assistance checks, direct rent payments by the Department of Transitional Assistance to the tenants' landlord, or participation by tenants in a leased housing or rental assistance program;
 4. Whether the tenants are engaged in rent withholding against their landlord;
 5. The amount of payments recently received by the company from the landlord and the size of the past due bill of the landlord;
 6. Whether the company has pursued collection remedies, other than threatened termination of service, against the landlord;
 7. Weather conditions;
 8. The existence of illness of tenants in the affected units;
 9. The ages of the persons residing in the affected units;
 10. The availability of other housing to the tenants; and
 11. The existence of, or potential for, terminations of service by other companies.

The Department may consider and give due weight to the above matters in any decision rendered pursuant to 220 CMR 25.02(5).

(8) Payment of Arrearage by the Tenants. For good cause shown upon affidavit of the company, the Department may hold a hearing and thereafter may require the tenants to pay a portion of the arrearage of the landlord customer's account deemed just and reasonable. The Department shall notify the landlord customer, the tenants and the company in writing of the date, time and place of the hearing. Payment of any portion of an arrearage may be required only if the company proves by substantial evidence that:

- (a) The total monthly rent due the landlord from the tenants is greater than the projected bill for the same period of time;
- (b) The tenants are not engaged in rent withholding against their landlord for any reason other than for the payment of the projected bill;
- (c) There are no claims of other companies against the withheld rent; and
- (d) Such a requirement will not impose an undue burden upon the tenants.

If more than one company claims the withheld rent, such companies, by mutual agreement, may join together in a single proceeding under 220 CMR 25.04.

(9) Larceny and Unauthorized Use of Gas, Electricity and Water. No company shall terminate service supplied through any meter or meter bypass to a residential building on account of larceny or unauthorized use thereof unless:

- (a) The company has attempted to identify and collect from the proper party to be billed; and
- (b) The company has given written notice to the tenants.

Such notice shall state:

1. The date on which the notice is rendered;
2. The date on or after which service will be terminated, such date to be not less than 30 days after the date of receipt of such notice;
3. That service will continue to a qualified party who agrees to pay for such service; and
4. That service will be continued through a master meter if the conditions established in 220 CMR 25.04(7) for continued service are met.

(10) Termination of Service for Reasons Other than Non-Payment. Nothing in 220 CMR 25.00 shall be construed to prevent terminations for reasons of safety, health, cooperation with proper civil authorities or any other proper reasons for which termination power is specifically granted in the General Laws.

Where service to a residential building is terminated on account of public health or safety, the company shall post a notice in a common hallway of the building stating the reason for the termination and the fact that service will be resumed if the danger to public health or safety is removed. The notice shall also include a telephone number at the company and at the Department which a tenant may call for an explanation of the situation and his rights. If any tenant disputes the existence of an unsafe condition, he may apply to the Department for an immediate determination of that issue.

The company shall notify the Department immediately, when feasible, of any termination required by public safety or health and, in any event, within 24 hours of such termination, excluding Saturdays, Sundays and holidays.

25.05: Termination of Service to Elderly Persons

(1) Identifying Elderly Persons. Each company shall devise procedures and methods reasonably designed to identify, before termination of service for non-payment, accounts affecting households in which all residents are 65 years of age or older. Such

procedures shall be submitted by each company in writing to the Department. The Department may require, by written notification, such modifications of the company's procedures as it considers reasonably necessary to carry out the purposes of M.G.L. c. 164, § 124E and M.G.L. c. 165, § 1B and of 220 CMR 25.00.

(2) Third Party Notification. If a customer 65 years of age or older so desires, the company shall provide to a third person designated by such customer notification of all past due bills [*see* 220 CMR 25.02(1)], notices of termination of service, and notices of right to a hearing at before the Department. In no event shall the third party so notified be liable for the account of the customer.

Each company shall devise procedures reasonably designed to provide a voluntary system of third party notification for all customers 65 years of age or older. Such procedures shall be submitted by each company in writing to the Department. The Department may require, by a written notification, such modifications of a company's procedures as it considers reasonably necessary to carry out the purposes of M.G.L. c. 164, § 124E and M.G.L. c. 165, § 1B and of 220 CMR 25.00.

(3) Termination Notice. A company may terminate service to a household in which all residents are 65 years of age or older only after such company first secures the written approval of the Department. In addition to the application for such approval filed with the Department, the company shall concurrently give written notice to the Executive Office of Elder Affairs (or any agency designated by the Executive Office of Elder Affairs for such purposes), any third person to be notified pursuant to 220 CMR 25.05(2) and the residents of such household. Such written notice shall state that an application to terminate has been filed with the Department and shall set forth the rights of the residents of the affected household to a hearing before the Department pursuant to 220 CMR 25.05(4). Prior to approval by the Department of such application, no company may send notices threatening termination of service to any household which has notified the company that all residents of the household are 65 years of age or older.

The notices required by 220 CMR 25.05 shall contain language in accordance with 220 CMR 25.05(5) and shall be in such form as shall be approved by the Department prior to its use.

(4) Investigation and Hearing. The Department shall not approve an application for termination of service to a household in which all of the residents are 65 years of age or older unless the following facts have been established in the course of an investigation:

- (a) The residents of the household, the Executive Office of Elder Affairs (or any agency designated by the Executive Office of Elder Affairs for such purposes), and any third person designated pursuant to 220 CMR 25.05(2) have received proper notification of termination pursuant to 220 CMR 25.00.
- (b) The company has in good faith attempted to secure payment by reasonable means other than termination; and
- (c) The company has not refused to accept any monthly installment payment agreement which is just and equitable.

The scope of the investigation need not be limited to the issue cited above, but may include any matters relating to a billing dispute brought to the Department's attention.

In appropriate cases, the Department may hold a hearing as part of the investigation. However, such investigation need not include a hearing unless requested by a resident or a third person designated pursuant to 220 CMR 25.05(2). If a hearing is held as part of the investigation, it shall be conducted before a Department representative, but shall not be construed to be an "adjudicatory proceeding" as defined by M.G.L. c. 30A.

The Department shall notify the company, the residents and any third person designated pursuant to 220 CMR 25.05(2), and the Executive Office of Elder Affairs (or any agency designated by Executive Office of Elder Affairs for such purposes) of the results of the investigation and of the right of the company or residents to appeal the decision of the Department for an adjudicatory proceeding as defined by M.G.L. c. 30A.

Within seven days of being so notified, the company, the residents, or any third person designated pursuant to 220 CMR 25.05(2) may request a hearing under M.G.L. c. 30A. If such a hearing is requested, no termination of service may occur until the proceeding has been concluded and a final order entered.

(5) Special Information Notice. All second requests for payment, notices of termination of service, notices of right to a hearing before the Department and all other written communications by a company to a residential customer regarding bills for service shall contain on their face or include the following notice:

"If all residents in your house are 65 years of age or older, the company cannot terminate your service for failure to pay a past due bill without approval of the Massachusetts Department of Telecommunications and Energy (DTE). If you cannot pay your bill all at once, you may be able to work out a payment plan with the company. You have a right to a hearing at the DTE before termination. If you have any questions or want further information, call the company at (insert number) or the DTE Consumer Division at (617)-727-3531/305-3630, Toll-free 1-800-392-6066 or TTY (for the hearing impaired only) 1-800-323-3298."

(6) Shut-off. Upon entering any building to make a shut-off of service to any customer therein, pursuant to M.G.L. c. 164, § 124 and M.G.L. c. 165, § 11A, the company's representative shall, prior to execution of the shut-off, state to an occupant of the home affected thereby that service is to be terminated. He shall also present such occupant with a notice as described in 220 CMR 25.05(5). If the company's representative is told that all of the occupants of the household are 65 years of age or older, service shall not be terminated unless such termination has been approved by the Department. If the occupant is not present or denies entry, the company's representative shall leave a notice as described in 220 CMR 25.05(5) at or under the occupant's door.

Liberal Construction. 220 CMR 25.00 shall be liberally construed and in those instances where notice(s) or any other act(s) is (are) required, 220 CMR 25.00 shall be deemed to read in the aggregate.

REGULATORY AUTHORITY

220 CMR 25.00: M.G.L. c. 164, §§ 60, 76C, 124A, 124D, 124E, 124F, 124H and 124I; M.G.L. c. 165, §§ 1B, 4, 11A, 11E; M.G.L. c.30A, § 2.